MONTANA LEGISLATIVE HISTORY

Chapter 326 1993

Bill H _____ S 443 Original bill & history ____C

H. Committee on Natural Resources		S. Committee on Natural Resources	
Hearing Date(s) Feb 24	✓ C	Hearing Date(s) _____	____C
Mar 06	✓ C	Feb 13	✓ C
_____	____C	_____	____C
_____	____C	_____	____C
Date Out Mar 06	✓ C		

Note: No Senate minutes prior to Feb 13 were found.

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

Saturday, February 24, 1973

The Natural Resources Committee was called to order in room 405 at 10:30 a.m. by Chairman Shelden with a quorum present.

The following bills were heard:

SENATE BILL 443:
Senator McGowan, the chief sponsor, was the first speaker. He stated that this was a needed reclamation bill dealing with the mining of sand and gravel. He suggested an amendment which states that operations covered under Title 50, Chapter 12, R.C.M. would not be covered by this act.

Ted Schwinden, Commissioner of the Department of State Lands, was the next speaker. He stated the department supports this legislation. He presented two suggested amendments. One was that any operator which removes ten thousand cubic yards, even if from several small operations will be covered by this law. The second was to strike "and the advisory committee" from page 10, line 13.

Fred Caruso, Construction Industries Council, was the next proponent speaker. His written testimony is exhibit 1.

Paul M. Foster, Montana Ready Mix and Concrete Products Association, was the next proponent speaker. His written testimony is exhibit 2. Also signing this testimony was Richard Morgenstern and Robert Gruber.

Questions were asked by the committee.

Shirley J. Berg, Sierra Club, signed as supporting SB 443.

SENATE BILL 211:
Senator James, the chief sponsor of this bill, was the first speaker. He stated that this bill amends a law to cover drilling of oil and gas wells that are less than 1000 feet. Since the department cannot now supervise these wells, they can't check to see that the plugging or cementing of the holes is properly done so as to protect the water sources of the area; they can't demand that the drilling sites be clean up; and most important they cannot demand safety measures in the drilli He stated that seismographic drilling and water well drilling is covere by other legislation.

Questions were asked by the committee.

SENATE BILL 445:
Senator Darrow, the chief sponsor, stated this was a floodway managemen act. It is to amend a law on the books by changing the definition of the flood frequency from fifty to a hundred. Senator Darrow passed a chart showing the difference there would be in feet between the 50 and 100 year flood plains--it would average about .4 of a foot. This is exhibit 3.

Gary Wicks, Department of Natural Resources, was the next proponent speaker and he said that he strongly endorsed Senator Darrow's remarks. He stated that his department would like an effective date included in the bill, and they would like it to be immediately. He said they also had a few house cleaning amendments.

Questions were asked by the committee. During this period Mr. Wicks brought out that if this amendment to the law were passed, the Department of Natural Resources could make use of studies done by the Army Corps of Engineers and the United States Geological Survey to implement the law, without doing extensive, expensive studies of their own. Both of these groups have based their studies on the 100 year flood frequency. There were feelings expressed by the committee that this bill would encroach on personal liberty--in that summer homes built on the flood plain would need permits before adding on or changing. Mr. Wicks assured them that there is a grandfather clause in this law to take care of existing dwellings. It was brought out, too, that it is not only the possible loss of human life and property (as happened in Rapid City), but it is also expensive to the taxpayer to build dikes to protect properties built on the flood plain and to repair and subsidize after a flood. Senator Darrow stated the act acknowledged that any activity that does not involve the loss of human life can continue. The act is to encourage that these areas be used for such things as hay meadows, golf courses, etc.

CONSIDERATION OF SENATE BILL 443:
Rep. Colberg moved that Senator McGowan's amendment be accepted (ex. 4). Motion carried unanimously except for those absent (Swanberg and Quilici).

Rep. Colberg moved that the first amendment made by the State Lands Dept. be accepted, and the motion carried unanimously by those present; Rep. Walborn moved that the second amendment made by the same department be accepted, and the motion carried unanimously by those present (absent were Swanberg and Quilici). A copy of these amendments is exhibit 5.

Rep. Harper moved that on page 10, lines 16, 20 and 21, to strike the sixty days and insert in lieu thereof the words "thirty days". This is the time allowed for the commission to respond to a reclamation plan submitted by an operator. Motion carried unanimously by those present (Swanberg and Quilici absent).

Rep. Colberg moved that we concur in SB 443 as amended; motion carried unanimously by those present (Swanberg and Quilici absent).

SENATE BILL 211:
Rep. Schepens moved that we concur. Motion carried unanimously by those present (Swanberg and Quilici absent).

SENATE BILL 445:
Rep. Johnston moved that we concur. Rep. Lucas made a substitute motion that we defer action until 1974. Rep. Lien made a substitute substitute motion that we pass SB 445 for the day. The last motion carried unanimously by those present (Swanberg and Quilici absent).

SENATE BILL 60:
Rep. Shelden read the amendment suggested by the sponsor (ex. 6).
Rep. Lucas moved that SB 60 be amended also in the title by adding "AND PROVIDING AN EXCEPTION FOR EMERGENCIES"; and that as amended by both amendments it be concurred in. The motion carried unanimously except by those absent (Swanberg and Quilici).

WATER RIGHTS – RATTLESNAKE CREEK

IN SUPPORT OF S.B. 443 2/24/73
House Natural Resources Committee

Mr. Chairman, members of the Committee: My name is Fred Caruso and I am representing the Montana Construction Industries Council in support of Senate Bill 443, the Open Cut Sand and Gravel Mining Act.

The provisions of this act are reasonable. The act is designed to protect our environment and natural resources without driving our small Montana sand and gravel operators out of business. As you know, the sand and gravel industry is essential to the construction industry. A bill such as S.B. 443 is of vital interest to our membership.

The Montana Construction Industries Council is an organization comprised of two directors from each of the following associations:

...The Montana Contractor's Association
...Montana Ready Mix and Concrete Products Association
...Montana Chapter--National Electrical Contractor's Association
...Montana Home Builders Association
...Home Builders Association of Billings
...Billings Associated Plumbing-Heating-Cooling Contractors
...Bozeman Industry Advancement Committee
...Montana Consulting Engineers Council
...Helena Contractors Council
...Billings Builders Exchange
...Montana Building Material Dealers Association
...Montana Chapter--American Institute of Architects
...Butte Contractors Council
...Home Builders Association of Great Falls

We urge that the Open Cut Sand and Gravel Mining Act be adopted. Thank you for your consideration.

/s/FRED CARUSO, Legislative Coordinator
MONTANA CONSTRUCTION INDUSTRIES COUNCIL

Ex. 4

SENATOR McGowan

AMEND SB 443

Page 16, line 19, insert the following

A new section 18: Nothing in this act shall be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50 Chapter 12, R.C.M.

Renumber section 18 as section 19

Ex. 5

State

S.B. 443 PROPOSED AMENDMENTS TO
"THE OPEN CUT SAND AND GRAVEL MINING ACT"

On page 6, line 9:

reclamation of the land affected. Any operator conducting a number of operations each of which result in the removal of less than ten thousand cubic yards of product or overburden but which result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden in the aggregate shall be subject to the provisions of this act.

page 10, line 13:

with the commission ~~and/the/advisory/committee~~ prior to

Ex. 6

SENATE BILL NO. 60

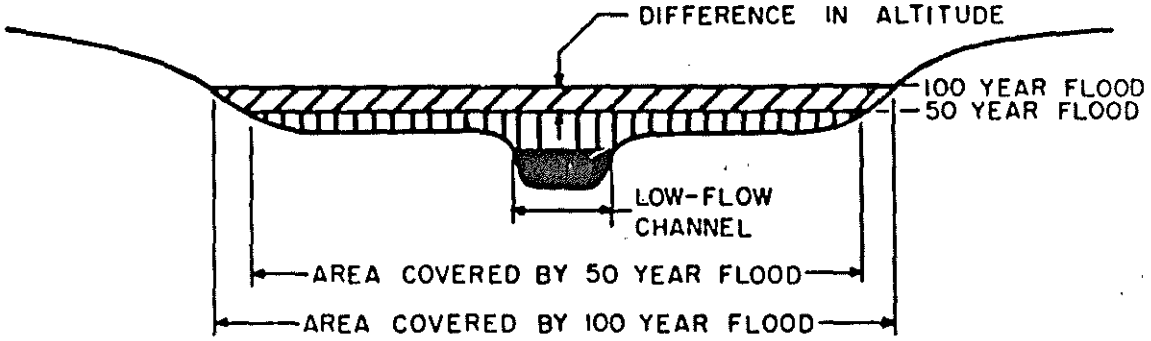
Amend on page 2, line 20, by deleting the period, and inserting in lieu thereof the following: "; however, capital improvements of an emergency nature necessary to protect life or property or to supply immediate needs for water do not require such approval."

WATER RIGHTS – RATTLESNAKE CREEK

8 x 3
Sen Hannon
Sen Bill 245

RELATION OF 50-YEAR FLOOD STAGES WITH 100-YEAR FLOOD STAGES ON SELECTED STREAMS IN MONTANA

TYPICAL FLOOD CROSS SECTION



REAMS	50-YEAR FLOOD	100-YEAR FLOOD	DIFFERENCE
	Altitude/feet	Altitude/feet	Altitude/feet
llowstone R. at Corwin Springs	5089.6	5090.1	0.[illegible]
llowstone R. near Livingston	4551.9	4552.3	0.4
ulder River at Pl[illegible] Timber	4068.6	4069.0	0.4
llowstone R. nr. Reed Point	3685.6	3686.1	0.5
arks Fork Yellowstone R. at Edgar	3448.5	3448.9	0.4
llowstone R. at FAS Bdy. 416 near Billings	3146.7	3147.0	0.3
llowstone R. at Miles City	2346.7	2347.4	0.7
llowstone R. nr. Fallon	2149.0	2150.0	1.[illegible]
llowstone R. near Sidney	1904.0	1905.2	1.[illegible]
wder R. near Locate	2409.[illegible]	2411.4	[illegible]
fferson R. nr. Whitehall	4[illegible]29.6	4330.2	[illegible]
r Hole R. near Melrose	5041.1	5041.5	.4
llatin R. near Gallatin Gateway	5174.6	5175.0	.[illegible]
souri River at Toston	3932.5	3933.2	0.7
lk River at Havre	2483.7	2484.8	1.1
ckfoot River near Bonner	3356.[illegible]	3357.3	[illegible]
ark Fork at Missoula	3211.7	3212.4	[illegible]
tterroot River near Darby	[illegible]3.4	[illegible].8	[illegible]
ra[illegible] R. near Thompson	[illegible]7.[illegible]	[illegible].7 .8	[illegible]
. Rocks R. near Ft. Peck	[illegible]3.2	[illegible]4.4	[illegible]
ark Fork at Ft. Peck	2623.3	2624.0	[illegible]
athead River at Columbia Falls	3003.2	3003.9	[illegible]
ark Fork near Plains	2467.7	2468.3	0.6

Tuesday, March 6, 1973

The Natural Resources Committee was called to order by Chairman Shelden in room 405 at 10:30 a.m. Chairman Shelden opened the meeting to a consideration of Senate Bill 444.

SENATE BILL 444:
Rep. Huennekens moved the committee adopt the amendments prepared and presented by the subcommittee. A copy of these is included with the minutes.

In the following discussion Rep. Huennekens said the amendments marked with an asterisk were taken from Mr. Gilbert's amendments. He stated the subcommittee (himself, Lucas, Swanberg) had had a number of meetings with members of the Natural Resources Department, Mr. Fred Johnson, Mr. Henry Loble and others.

Also mentioned was the moratorium which lasts until 1978--which keeps states from taking water from other states. This moratorium was to give states like Montana an opportunity to get their water rights in order so they would know what they were using and what they will need in the future. This fact makes a law like this imperative. Chairman Shelden mentioned when you consider what an acre foot of water is worth here and what it would be worth in the Imperial Valley of California--we are not starting any too soon.

The committee agreed this was a complicated bill with far reaching implications and it might need further work at the next session; but the feeling seemed to be that the bill should not be delayed.

Rep. Swanberg went through the important items that the amendments covered. Four additional changes had been made by the subcommittee which weren't on the typewritten copies: struck was the first amendment on page 2 of the amendments and the ninth one on page 4; added was one on page 41 (of the Senate Third Reading Bill), lines 3 and 4, striking them in their entirety; added, also, was one on page 57 of the same bill, lines 20 through 22, starting with the "," on line 20 striking them in their entirety and inserting in lieu thereof the following: "there shall be a prima facie presumption that the appropriator has abandoned his right in whole or for the part not used."

Action was taken on Rep. Huennekens's motion. It carried unanimously except for those absent (Ainsworth and Johnston).

Rep. Huennekens moved that SB 444 be concurred in as amended. The motion carried unanimously. Reps. Bradley and Lucas had had to leave for other meetings but requested their vote be cast in favor of concurring. Reps. Ainsworth and Johnston were absent.

SENATE BILL 443:
Chairman Shelden stated this bill had been concurred in as amended on February 26, but when Senate Bill 94 removed bentonite from its coverage; this bill was recalled to include bentonite.

Rep. Huennekens moved that throughout the bill bentonite be inserted in the appropriate places and sand and gravel struck in the appropriate places. The motion carried unanimously except for those absent (Ainsworth, Lucas, Johnston, Bradley).

Rep. Lien moved SB 443 by concurred in as amended. Motion carried unanimously except for those absent (Ainsworth, Johnston, Lucas, Bradley).

Meeting adjourned at 11:45 a.m.

Respectfully submitted,

ARTHUR H. SHELDEN, Chairman

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The Seventeenth meeting of the Committee on Natural Resources met in the Highway Auditorium at 10 A.M. on Tuesday, February 13, 1973 to hear Senate Bills, 444 and SJR 39 and SB 445.

A motion was made by Senator Flynn, seconded by Senator McGowan to hold over SB 434. Voted and passed.

A motion by Senator McKeon, seconded by Senator Cochrane to hold over SB 401. Voted and passed.

A motion by Senator McKeon, seconded by Senator Bennett to [illegible] SB 443.

A motion by Senator McKeon, seconded by Senator McGowan that Senate Bill 404 DO PASS. Voted and passed.

Senate Joint Resolution 39 was explained by Senator Darrow, also Senate Bill 445.

Proponents speaking forSJR 39 were a gentleman who did not give his name, statement attached, as exhibit 1. Mr. George Pike, for the United States Geological Survey, statement attached, exhibit 2.

Senate Bill 444 was explained by Senator McGowan and the proponents on the bill were as follows:

Mr. Fred Caruso, representative of the Montana Water Development Association, statement attached as exhibit 3.

Gary Wicks, Director of Natural Resources and also with the Conservation spoke on the bill listing the need for the state to use its water for beneficial use, and to have it filed to avoid the deadline and the Federal Government stepping in with the water being lost to downstream users.

Senator McOmber, from the Sun River irrigation project felt that the state must pass its water laws or lose its water.

Representative Nichols, District 22 concurred.

Cecil Weeding, member of the Governor's Advisory Council on Water, also spoke as an opponent.

Opponents of the bill were as follows:

W. G. Gilbert, representing several irrigation organizations, a rancher, and an attorney.

James Paugh, Gallatin County Farm Bureau.

Charles Eckles, Fishtail, representing the Stillwater County and Stillwater Farm Bureau.

Pete Zurkey, representing the Stillwater Woolgrower's Association.

Wesley D'Ewart, speaking for himself.

CHAPTER NO. 326

An Act to Provide for Reclamation and Conservation of Land Subject to Open Cut Bentonite, Sand or Gravel Mining; Requiring Reclamation Contracts for Operations Resulting in Removal of Ten Thousand (10,000) Cubic Yards of Overburden or Product; Providing Enforcement by the State Board of Land Commissioners; Repealing Sections 50-1018 through 50-1033, R.C.M. 1947, and Providing an Effective Date.

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act shall be known and may be cited as "The Open Cut Mining Act."

Section 2. It is the policy of this state to provide for the reclamation and conservation of land subjected to open cut bentonite, sand or gravel mining. Therefore, it is the purpose of this act to preserve natural resources, to aid in the protection of wildlife and aquatic resources, to safeguard and reclaim through effective means and methods all agricultural, recreational, home and industrial sites subjected to or which may be affected by open cut bentonite, sand or gravel mining to protect and perpetuate the taxable value of property, to protect scenic, scientific, historic or other unique areas, and to promote the health, safety and general welfare of the people of this state.

Section 3. The state board of land commissioners is hereby authorized to enter into contracts in the name of the state of Montana with operators which will provide for the reclamation of lands on which open cut mining of bentonite, sand and gravel has been or is to be conducted. The state board of land commissioners is authorized to sue and be sued in the name of the state of Montana to enforce the provisions of any contract, and said board shall bring such court actions and take such other steps and actions as may be necessary to enforce the provisions of such contracts.

Section 4. When used in this act, unless a different meaning clearly appears from the context:

(1) "Contract" means a mined land reclamation contract prepared by the commission to meet the requirements of this act.

(2) "Open cut mining" means the mining of bentonite, sand or gravel by removing the overburden lying upon natural deposits thereof, and mining directly from the natural deposits thereby exposed, including the removal of overburden for the purpose of determining the location, quality or quantity of any natural deposit of bentonite, sand or gravel.

(3) "Reclamation" means the reconditioning of the area of land affected by open cut mining operations to make the area suitable for productive use including but not limited to, forestry, agriculture, grazing, wildlife, recreation, residential and industrial sites.

(4) "Overburden" means all of the earth and other materials which lie above a natural deposit of bentonite, sand or gravel. "Spoil" is the overburden disturbed from its natural state in the process of open cut mining.

(5) "Operator" means any person engaged in and controlling an open cut mining operation.

(6) "Affected land" means the area of land from which overburden is to be or has been removed and upon which the overburden is to be or has been deposited.

(7) "Commission" means the state board of land commissioners.

(8) "Person" means any natural person, or any firm, association, partnership, cooperative, corporation or any department, agency or instrumentality of the state or any governmental subdivision, or any other entity whatsoever.

(9) "Landowner" means the owner of land directly or indirectly affected by an open cut mining operation.

(10) "Public notice" means notice given by publication in a newspaper in the general area where the affected land is located. Such notice shall be given once a week for three (3) successive weeks.

(11) "Soils materials" are those horizons containing topsoil or other soils leached free of deleterious salts and capable of sustaining plant growth and recognized as such by standard authorities.

(12) "Refuse" means all waste material directly connected with the open cut mining operations.

(13) "Final cut" means the last pit created in an open cut mined area.

(14) "High wall" means that side of the pit adjacent to unmined land.

(15) "Reclamation plan" means the description of current land use, topographical data, water data, soils data, leased areas, intended mine areas and description of proposed reclamation of the land with appropriate maps.

(16) "Progress report" means a report showing the land which the operator has affected by open cut mining during the year. Such report shall show the number of acres of affected land and all reclamation accomplished.

Section 5. The commission is the administrator of this act and it has all the power necessary to implement and enforce it. The commission may delegate to the commissioner of state lands such powers, duties and functions under this act as it deems necessary for the performance of its duties.

Section 6. The commission has the following powers, duties and functions:

(1) to enter into contracts where it is found on the basis of the information set forth in the application and an evaluation of the operation by the commission that the requirements of the act or rules will be observed and that the operation and the reclamation of the affected area can be carried out consistent with the purpose of the act;

(2) to prepare and adopt rules and regulations pertaining to open cut mining to accomplish the purposes of this act;

(3) to conduct hearings and for the purposes of conducting such hearings, to administer oaths and affirmations, to subpoena witnesses, to compel attendance of witnesses, to hear evidence and to require the production of any books, papers, correspondence, memoranda, agreements, documents or other records relevant or material to the inquiry;

(4) to adopt uniform procedures for the filing of necessary records, the issuance of contracts, and for any other matters of administration not specifically enumerated in this act;

(5) to reclaim any affected land with respect to which a bond has been forfeited;

(6) to make investigations or inspections which may be deemed necessary to insure compliance with any provisions of this act.

Section 7. From and after the effective date of this act, no operator shall conduct open cut mining operations which shall result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden, until he has entered into a contract with the commission for the reclamation of the land affected. Any operator conducting a number of operations each of which result in the removal of less than ten thousand (10,000) cubic yards of product or overburden but which result in the removal of ten thousand (10,000) cubic yards, or more, of product or overburden in the aggregate shall be subject to the provisions of this act.

Section 8. Applications for a contract shall be made upon a form furnished by the commission, which form contains the following:

(1) the name of the operator and, if other than the owner of the land, the name and address of the owner.

(2) the type of operation to be conducted;

(3) the volume of earth to be removed, as accurately as the same may then be estimated, and the volume which has been previously removed, if any;

(4) the location of the operation by legal subdivision, section, township and range, and county;

(5) the date when such operation was or will be commenced;

(6) the operator must submit a plan of his operation and the method and manner of reclamation that will be used or followed. If the operator, prior to applying for a contract, notifies the commission of his intention to submit a plan, and requests the commission to examine the area to be mined, the commission shall cause the area to be examined and make recommendations to the operator regarding reclamation;

(7) a statement that the applicant has the right and power by legal estate owned to mine by open cut mining the lands so described;

(8) the application shall be accompanied by:

(a) a bond or security meeting the requirements as set out in this act, and

(b) a fee of fifty dollars ($50);

Upon receipt of such application, bond or security and fee due from the operator, and upon agreement to the terms of the contract by the parties, the commission may issue a contract to the applicant which shall entitle him thereafter to continue in or engage in open cut mining on land therein described;

(9) an operator desiring to have his contract amended to cover additional contiguous or nearby land may file an amended application with the commission. Upon receipt of the amended application, and such additional bond as may be required, and upon agreement to the terms of the amendment by the parties, the commission may issue an amendment to the original contract

covering the additional land described in the amended application, without the payment of any additional fee;

(10) an operator may withdraw any land covered by contract, except affected land, by notifying the commission thereof, in which case the penalty of the bond or security filed by such operator pursuant to the provisions of this act shall be reduced proportionately.

Section 9. (1) Any bond required to be filed in this act by the operator shall be in such form as the commission prescribed, payable to the state of Montana, and conditioned upon the operator's full compliance with all requirements of this act and all rules and regulations of the commission. Such bond shall be signed by the landowner or operator, as appropriate, as principal, and by a good and sufficient corporate surety, licensed to do business in the state of Montana, as surety. The penalty of such bond shall be in an amount not to exceed the costs of restoration required by this act as determined by the commission, but shall not be less than two hundred dollars ($200) nor more than one thousand dollars ($1,000) per acre.

(2) In lieu of such bond, the operator may deposit cash and government securities or a bond with property sureties with the commission in an amount equal to that of the required bond on conditions as above prescribed. In the discretion of the commission, surety bond requirements may be fulfilled by the operator's posting a bond with land and improvements and facilities thereon as security, in which event no surety shall be required. The penalty of the bond or amount of cash and securities shall be increased or reduced from time to time as provided in this act. Such bond or security shall be and remain in effect until the mined acreages have been reclaimed, as provided under the contract, and approved and released by the commission, and shall from time to time cover only actual mined acreages and may be increased or reduced to cover only such acreages as remained unreclaimed.

(3) If the license to do business in the state of any surety upon a bond filed with the commission pursuant to this act shall be suspended or revoked, the operator, within thirty (30) days after receiving notice thereof from the commission, shall substitute for such surety a good and sufficient surety licensed to do business in the state. Upon failure of the operator to make substitution of surety, the commission shall have the right to suspend the contract of the operator to conduct operations upon the land described in such contract until such substitution has been made.

(4) The commission shall cause to be reclaimed any affected land with respect to which a bond has been forfeited.

(5) Whenever an operator shall have completed all of the requirements under the provisions of this act as to any affected land, he shall notify the commission thereof. If the commission shall release the operator from further obligation regarding such affected land, the penalty of the bond shall be reduced proportionately.

Section 10. The contract shall meet the following requirements:

(1) The operator shall submit a reclamation plan to the commission before commencing any open cut mining, and may not commence mining before it receives approval from the commission. The operator may request and receive a meeting with the commission prior to submission of the plan. If the commission does not notify the operator that it has approved or disapproved a plan within thirty (30) days after the commission has received the plan, the commission shall be deemed to have approved the plan. The commission, however, may for sufficient cause extend its period of consideration for an additional thirty (30) days if it notifies the operator prior to the end of the original thirty (30) day period. The commission shall submit all reclamation plans or amendments to the reclamation plan to the landowner for his recommendations and shall consider those recommendations in deciding whether to approve or disapprove any plan or amendments. The commission may seek technical help from any state or federal agency. The commission must submit the plan immediately to the director, university of Montana statewide archeological survey for evaluation of possible archeological or historical values in the area to be mined. The commission may approve a reclamation plan only if the commission has found that the plan provides for the best possible reclamation procedures available under the circumstances at the time, so that after mining operations are completed the affected land shall be reclaimed to a productive use. Once the reclamation plan has been accepted in writing by the commission, it shall become a part of the contract but shall be subject to annual review and modification by the commission.

(2) The commission may not approve any reclamation plan unless the plan provides that:

(a) the land will be reclaimed for one or more specified uses, including but not limited to: forestry, pasture, orchard, cropland, residence, recreation, industry, habitat (including food, cover or water) for wildlife or other uses;

(b) to the extent reasonable and practicable, the operator shall establish vegetative cover commensurate with the proposed land use;

(c) where operations result in a need to prevent acid drainage or sedimentation, on or in adjoining lands or streams, there shall be provisions for the construction of earth dams or other reasonable devices to control water drainage, provided the formation of such impoundments or devices will not interfere with other landowners rights or contribute to water pollution;

(d) to accomplish practical utilization of soil materials, such material will be utilized for placement on affected areas if required by the reclamation plan after completion or termination of that particular phase of the mining operations at a depth sufficient for plant growth on slopes of 3:1 or less. Grading specifications shall be commensurate with the topography sought and land use designated;

(e) metal and other waste shall be removed or buried;

(f) all access, haul and other support roads shall be located, constructed and maintained in such a manner as to control and minimize channeling and other erosion;

(g) the operator shall submit annually to the commission a progress report;

(h) all operations shall be conducted so as to avoid range and forest fires and spontaneous combustion. Open burning of carbonaceous materials shall be in accordance with suitable practices for fire prevention and control;

(i) archeological and historical values in areas to be mined shall be given appropriate protection;

(j) except for rock faces, bench faces and excavations used for water impoundments, each surface area of the mined premises which will be disturbed shall be revegetated when its use for extractive purposes is no longer required. Seeding and planting shall be done in a manner to achieve a permanent suitable vegetative cover for wildlife, livestock and retardation of erosion. All seed will be drilled unless otherwise provided in the plan;

(k) reclamation shall be as concurrent with mining operations as feasible, and must be completed within a specified length of time.

(3) If reclamation according to the plan has not been completed in the time specified, the commission shall after thirty (30) days written notice order the operator to cease mining, and.

if the operator does not cease, shall institute an action to enjoin further operation and may sue for damages for breach of contract, for payment of the performance bond, or for both.

(4) (a) At any time during the period of reclamation the operator may for good reason submit to the commission a new reclamation plan or amendment to the existing plan including extensions of time.

(b) The commission may approve the proposed new reclamation plan, or amendments to the existing plan if:

(i) the operator has in good faith carried on reclamation according to the existing plan, and

(ii) the proposed new plan, or amendments to the existing plan, will result in reclamation as desirable or more so than the reclamation proposed under the existing plan, or

(iii) it is highly improbable reclamation will be successful unless the existing plan is replaced or amended. When accepted, the proposed new reclamation plan or the proposed amendments to the existing plan becomes a part of the contract.

(5) The operator shall provide a performance bond, or an alternative acceptable to the commission, in an amount commensurate with the estimated cost of reclamation, but in no case shall the bond be less than two hundred dollars ($200) per acre. The estimated cost of reclamation shall be set forth in the reclamation plan.

(6) The contract, reclamation plan and amendments accepted by the commission shall be a public record and open to inspection.

(7) The contract shall become effective when signed by the commission and the operator, and shall remain in force until terminated by mutual consent or by the commission upon six (6) months notice.

Section 11. The commission may receive any federal funds, state funds or any other funds for the reclamation of land affected by open cut mining. The commission may cause the reclamation work to be done by its own employees or by employees of other governmental agencies, soil conservation districts or through contracts with qualified persons.

Any funds or any public works programs available to the commission shall be used and expended to reclaim and rehabilitate any lands that have been subject to open cut mining that have not been reclaimed and rehabilitated in accordance with the standards of this act.

Section 12. The commission, or its accredited representatives, may enter upon lands subjected to open cut mining at all reasonable times for the purpose of inspection, to determine whether the provisions of this act have been complied with.

Section 13. Anyone required by this act to have a contract and who engages in open cut mining without previously securing a contract to do so as prescribed by this act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than five hundred dollars ($500) and not more than one thousand dollars ($1,000). Each day of operation without a contract required by this act shall be deemed a separate violation.

Section 14. The commission shall have the power to reclaim, in keeping with the provisions of this act, any affected lands with respect to which a bond has been forfeited.

Section 15. (1) A person who is aggrieved by a final decision of the commissioner of state lands is entitled to a hearing before the commission.

(2) The Montana Administrative Procedure Act (title 82, chapter 42, R.C.M. 1947) governs hearings before the commission and judicial review of decisions of the commission under this act.

Section 16. The provisions of this act are severable, and if any part or provision thereof shall be held void the decision of the court so holding shall not affect or impair any of the remaining parts of provisions of this act that are severable from the invalid applications.

Section 17. Sections 50-1018 through 50-1033, R.C.M. 1947, are repealed. However, contracts entered into under the provisions of sections 50-1018 through 50-1033, R.C.M. 1947, are not affected hereby, and shall remain in effect until terminated or completed.

Section 18. Nothing in this act shall be construed to be applicable to mining or exploration operations which are regulated under the provisions of Title 50, Chapter 12, R.C.M. 1947.

Section 19. This act is effective on its passage and approval.

Approved: March 16, 1973.

CHAPTER NO. 327

An Act to Vest in the Department and Board of Natural Resources and Conservation the Authority to Require and Review Long-Range Planning By Certain Utilities, to Give Approval to Energy Generation and Conversion Plant Sites and Associated Facilities, to Require Preconstruction Certification of Such Facilities; Providing Penalties For Violation of This Act; and Providing An Effective Date."

Be it enacted by the Legislative Assembly of the State of Montana:

Section 1. This act may be cited as the Montana Utility Siting Act of 1973.

Section 2. It is the constitutionally declared policy of this state to maintain and improve a clean and healthful environment for present and future generations; to protect the environmental life support system from degradation and prevent unreasonable depletion and degradation of natural resources; and to provide for administration and enforcement to attain these objectives.

The legislature finds that the construction of additional power and energy conversion facilities may be necessary to meet the increasing need for electricity and other energy, and that such facilities have an effect on the environment, an impact on population concentration, and an effect on the welfare of the citizens of this state. Therefore, it is necessary to ensure that the location, construction and operation of power and energy conversion facilities will produce minimal adverse effects on the environment and upon the citizens of this state by providing that no power or energy conversion facility shall hereafter be constructed or operated within this state without a certificate of environmental compatibility and public need acquired pursuant to this act.

Section 3. The following words, when used in this act, shall have the following meanings unless otherwise clearly apparent from the context:

(1) the word "department" means the department of natural resources and conservation.

(2) the word "board" means the board of natural resources and conservation.

(3) the words "utility facility" or "facility" mean:

(a) any energy generating and conversion plant and associated facilities

(i) designed for, or capable of, generating at fifty (50) megawatts of electricity or more or any addition thereto (except pollution control facilities approved by the department of health and environmental sciences added to an existing plant) having an estimated cost in excess of two hundred fifty thousand dollars ($250,000), or